

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 551 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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V U UPADHYAY

Versus

STATE OF GUJARAT

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Appearance:

MR TR MISHRA for Petitioners

Mr. A.J.Desai for M/S MG DOSHIT & CO for Respondent No. 1

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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 18/10/96

ORAL JUDGEMENT

The petitioner are a group of government employees, who, for some time had an opportunity of working as Government Labour Officers in the year 1984-85. However, their appointment was made right from the beginning for a period of three months purely on

temporary basis or till the regularly selected candidates for the posts were made available through GPSC whichever being earlier.

2. The said time limit approached. The Government took a decision as per Annexure "C" page 22. Initially, the appointment was made as per annexure "A" page 23. This is a notification dated 27.6.1984 whereby the Government decided to exercise Rule 53 of Gujarat Financial Rules. The said Rule is as under:

" 53 (1) Subject to the restriction prescribed in the rule, in cases where establishments are divided into separate units or cadres carrying different scales of pay, an Administrative Department or a Head of Department may make excess appointments in a lower unit or cadre against an equal or greater number of vacancies left unfilled in a higher unit or cadre.

(2) xxx

(3) xxx "

3. Once the aforesaid Rule is kept in mind, consequential order Annexure "C" passed as per Annexure "D" page 24 would at once be cleared. So far as petitioner no.1 is concerned, by way of illustration,, his case at item no. 11 page 26, can be gone into at length. At that item no. 11, it has been categorically stated that the said petitioner V.U.Upadhyay, Government Labour Officer is now posted as Scrutiniser against post of Labour Officer which has been kept vacant.

4. It is an admitted position that the post of Labour Officer is of class II as well as that of Scrutiniser is that of class III.

5. It is therefore, obvious that keeping the post of higher cadre vacant, namely that of the Inspector, the additional number of posts in the lower cadre were created till candidates for the higher posts were made available through PSC. This being therefore, entirely in keeping with the said provisions of the Rule, I do not see any substance in the matter. Annexures "C" and "D" , cannot be said to be illegal in any manner and therefore, there is no question of declaring them illegal or quashing and setting them aside either.

6. With the passage of time, situation has developed to the effect that several persons came to be promoted and got higher pay scales etc. These details are set out in the affidavit of one Smt. V.K.Kanthariya, petitioner no. 6 at page 54 with accompaniments.

7. Her affidavit reveals the position, i.e. development during the years 1993 to 1996. This being a subsequent development, obviously if at all it was so, it shall give rise to a new cause of action which can be agitated before appropriate forum. In my opinion therefore, the petitioners having this possibility before them, it is not necessary to go into these subsequent developments and their implications in the present petition. So far as the present petition is concerned, there is no substance in it and is rejected. Rule discharged with no order as to costs.

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